IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN
AT JODHPUR

O R D E R

Mahant Budha Ram V/S State & Ors.

S.B.CIVIL WRIT No. 3585 of 1993
UNDER ARTICLE 226 & 227 OF THE
CONSTITUTION OF INDIA.

Date of order : 15th January, 2007

PRESENT
HON'BLE SHRI N.P.GUPTA,J.

Dr. R.S.Dev Rajpurohit, for the petitioner.
Mr. N.M.Lodha, for the respondent.

BY THE COURT:

By this petition, the petitioner seeks to have quashed the order Annexure-25(sic Annexure-22) dt. 4.5.1993 passed by the learned Commissioner Devasthan, Udaipur.

By Annexure-25 the Commissioner Devasthan has set aside the order of Assistant Commissioner Devasthan dt. 29.1.1991, in an appeal filed under Section 20 of the Rajasthan Public Trust Act, hereafter referred to as the Act, and found, that from the records available, and the statements of Pujari it is clear that the temple in question was constructed by Manmal Ji and donated the land

to the temple, and that Pokardas and Budhuram are merely Pujari which does appear from the admission made in various documents. It has been found that from various judgments it is established law, that Pujari does not get any title in the land, and therefore, the matter was remanded to the Assistant Commissioner, with a direction to him, to register the trust in the name of the persons filing appeal before the Commissioner, and clarifying, that Pujari shall be entitled to render his service till he maintains good conduct.

The case set up by the petitioner in the writ petition is, that there is a temple Shree Gopalji, popularly known as Dharm Dasji Ka Akhada, of which the petitioner claims to be Mahant of the Akhada (temple). The petitioner is alleged to be belonging to Nimbark Sampraday, and genealogy of Nimbark Samraday has been given, and some tenets have been recapitulated. Then, it has been pleaded that Mahantship descends from Guru to disciple i.e. existing Mahant alone appoints the successor, who after death becomes full owner of the property attached to the Akhada, and in the instant case the last Mahant Pokar Das executed a Will on 18.12.1972. Then, after his death, on the occasion of Bhandara, the followers of the Sampradaya and devotees of the last Mahant got the petitioner seated as Mahant. Then it was pleaded, that in the main temple of Gopalji there are other deities of Mahadevji, Ganga Mai,

Mataji, Ganeshji and Hanumanji, and around this main temple there is Nohra on three sides, having two big gates, one in the East and the other in the South, there are old constructed houses, which have been given to different tenants on rent, and in the main temple of Gopalji there are two Samadhies, and three Samadhies are in Nohra attached to the temple. Then, in para-10 it was pleaded that the Patta was granted on 21.8.1908, wherein it was mentioned, that the temple was constructed by the ancestors of Bhandari Jeewan Mal Nimbawat and the Patta was given in the name of Mahant Behari Das, entitling him to enjoy the property in succession, and it is pleaded that in the beginning, the Akhada and the temple, which was constructed was in the small dimension but later on it was extended and repaired from time to time. Then, the theory of Mahant was given, and it was pleaded, that the petitioner is receiving rent from various tenants, reference was made to certain litigation pending against certain tenants. Then, in para-15 it was pleaded that there are agricultural lands including well in Merta, Jaitaran etc. which are attached to this temple, and some of those properties were encroached by persons of respective villages, then Pokardas filed revenue suit, in which possession was restored to Pokar Das. Then, the land was mutated in the name of the petitioner. Then, in para-17 difference between Pujari and Mahant is sought to be highlighted. Then, in para-18 it was pleaded as under:-

> "That the founder of the temple as evident from the Patta of the Akhada it is clear that the temple was constructed originally by ancestors of one Bhandari Jeewan Mal Nimbawat.....".

Then, in para-19 the petitioner reiterated his claim on the basis of the Will, and significant subsequent installation as Mahant. Interalia with these, it was sought to be contended, that the temple is a private temple, and the petitioner being Mahant, is the absolute owner thereof, more so in view of the Patta of the year 1908, and therefore, the authorities under the Public Trust Act have no jurisdiction whatever to order its registration.

Respondents no. 4 and 5 filed a reply, contending interalia, that the petitioner virtually wants a declaration of title, for which the writ is not a proper forum. Then, it was contended that he claims to be successor of Pokar Das, while Pokar Das himself has admitted, that he is Pujari, and in that regard had given statement before the Assistant Commissioner Devasthan, so also in various applications, he has posed himself to be Pujari, as such the petitioner cannot claim himself to be better, and claim to be Mahant. Then, it was pleaded that some tenants are giving rent to trust, while some have been won over by the petitioner, and this conduct disentitles him to maintain the writ. Then, it was pleaded that the property i.e. the temple was constructed by Shri Man Mal in

the memory of his daughter in law, and his descendants are not claiming the property, as it was given for Deepawat Bhandaries Community, and only want to have it declared as a public trust, while the petitioner by this writ petition wants to grab the property. Then, it was pleaded that a dispute earlier arose with respect to properties at Jaitaran and Merta, attached to this property, and this dispute has been adjudicated against the petitioner, and his predecessors, therefore, he is not entitled to maintain the writ petition. These contentions were raised by way of preliminary objections. Then, giving parawise reply, the respondents produced Annexure R 4/1, a copy of the suit filed before the Court of S.D.O. Merta by Pokar Das; then, statement of Pokar Das, recorded by Assistant Commissioner, and two applications submitted by Pokardas to the Assistant Commissioner Devasthan, have been produced. In all these four documents it was admitted by Pokar Das to be Pujari, and supervising on behalf of Bhandaries. Then, the earlier order passed has been produced as Annexure R 4/5. Then, the Will was denied. Then, correctness of Patta was disputed, claiming that Ex.-4 is not true and correct copy of the original, and contains overwriting. Then, various other pleadings were taken, and it was contended, that the order does not require any interference in the writ jurisdiction.

The petitioner also filed a rejoinder, and it was contended that there is no question of adjudication of

title, as the title is already with the ancestors of the petitioner under the Patta of 1908. Then, the philosophy of Mahantship was given out. Then, reference was made to certain litigation between tenants. It was also contended that unless respondents no. 4 and 5 get adjudication of title in their favour, they cannot apply for registration. Then, regarding the order passed on the dispute about Merta and Jaitaran property, it was contended, that the land has already been mutated in favour of the petitioner, and that the judgment of Hakim is not in the knowledge of the petitioner, and therefore, is not admitted. Then rejoinder to parawise reply was also given, and various factual disputes were raised, including contending a high position of command by Man Malji in Marwar State. Then, it was contended, that in the Patta Beharidas has not been described as Pujari. It was maintained that Pokar Das was Mahant cum Pujari. A stand was also taken that the private respondents are Oswal Jain by religion, while the temple is a Vaishnav temple, with which they have nothing to do. Then, it was pleaded that the application and the statement Annexure R/4-1, 4/2, 4/3 and 4/4 are false and fictitious, as Pokar Das was admitted in the hospital on 6.12.1977, and Assistant Commissioner sent a notice to Pokar Das for attending the Court on 10.1.78, which was issued on 15.11.1977, and the said notice was not served, as Pokar Das was hospitalised as indoor patient, and thus he could not give statement on 22.12.1977. Then, it was contended

that the property is not in possession and ownership of the trust, according to Section 18, and therefore, the trust could not be registered, rather the petitioner is in actual ownership and possession of Akhada and the property attached to it.

Since by the order Annexure-25 the matter was only remanded, when the matter came up for hearing on 11.1.2007, time was granted to both the learned counsel to find out as to what has been the out come pursuant to the impugned remand order, as there was no stay from this Court staying further proceedings. Then, on 12.1.2007, learned counsel for the respondent filed certified copy of the order passed by the Assistant Commissioner, Devasthan on 13.5.1993, pursuant to the remand order, and submitted that no further proceedings have been taken by the petitioner against this order dt. 13.5.1993, and also contended that in that view of the matter, the writ petition becomes infructuous.

I have heard learned counsel for the parties at length. Learned counsel for the petitioner argued lot about the tenets of Nimbawat Sampraday, the comprehension and incidents of the institutions of Mahant and Pujari, Mandir and Math, and also submitted that the present property is a personal property of the petitioner, may be that the temple may have been constructed by Jeevan Mal Bhandari, but since it was given to ancestors of the petitioner, and Patta was

issued in his name as absolute owner, it cannot be said to be a public trust, requiring registration. Learned counsel contended that Math and temple are two different things, and may be together, and in the Math there is a Mahant, while in the temple there is a Pujari, and one person may be having both the capacities of Mahant and Pujari, and the petitioner and his ancestors were also like this, being Mahant and Pujari at the same time, and therefore, the property does not require registration. Certain judgments were cited to contend as to when temple can be said to be public or private. At one point of time learned counsel also raised the contention, that since the counsel representing private respondents no. 4 and 5 have been appointed as advocate on behalf of the Government, he is not entitled to represent his client, and the reply filed by him is required to be ignored. However on being asked to substantiate his contention on any legal basis, learned counsel for the petitioner could not substantiate, and therefore, the contention was left at that only. Since the argument continued for a long, during course of arguments, it transpired that the temple also had certain Doli lands, and according to the provisions of Rajasthan Land Reforms (Resumption of Jagir) Act, 1952, Doli is in the nature of Jagir, and that Jagir was resumed and compensation of that Jagir was given.

It may also be observed, that while practically

concluding the arguments on 12.1.2007, learned counsel for the petitioner conceded, that from the material on record, it cannot be disputed, that the temple is a public temple, and in view of the valuation of the assets it does require registration under the Act, and submitted, that still it could not be registered in the name of private respondents, rather it is required to be registered in the name of the petitioner.

Learned counsel for the respondents on the other hand contended that the petitioner claims under a Will, and at the same time claims to be successor of Mahant, and has not made it clear as to which position he maintains. Then, he submitted that Annexure-25 is only an order of remand, and pursuant thereto a final order has been passed on 13.5.1993, certified copy whereof has been produced, and that has not been challenged by the petitioner. In that view of the matter, the writ petition becomes infructuous. It has been contended that in the prayer clause of the writ two prayers have been made, but the submissions were made only with respect to first prayer, which, in view of the above becomes infructuous, and therefore, the writ is liable to be dismissed. Then, learned counsel invited my attention to Annexure R 4/1 to R 4/5, and submitted that they are admissions of petitioner's predecessor Pokar Das about his being only Pujari, and about having not appointed the petitioner as disciple, and that these are documents

subsequent to the alleged Will, and in that view of the matter, the petitioner is not entitled to any relief whatever. Attention was also invited to certain pleadings of the writ, and the averments made in Annexure R 4/1, to contend, that Pokar Das never asserted himself to be the Mahant, or owner of the property, and always claimed to be Pujari and in Annexure R 4/3, which is of May, 1978 Pokar Das admitted to be receiving certain amount for maintenance from ancestor of answering respondents, and therefore, the whole edifice built by the petitioner topples down, having no basis, rather the basis projected is knocked down by the admissions of the predecessor of the petitioner.

In rejoinder the learned counsel for the petitioner reiterated that Pokar Das was ailing and was in hospital, and therefore, he could not give statement Annexure R 4/4, which is not at all reliable.

I have considered the submissions, and have gone through the record available on the file. At the outset it may be observed, that in view of the concession made by the learned counsel for the petitioner in a very categoric terms on 12.1.2007, about it being a public temple trust, and requiring to be registered under the Public Trust Act, the whole thrust of the submissions made by the learned counsel stands wiped out, and need not detain me.

It is a different story that of course there is a distinction between temple and Math, and temple has a Pujari while Math has a Mahant, but then there is nothing on record to show, that any Math is there at all. Simply because in common parlance temple is addressed as Dharmdasji Ka Akhada, it does not become Math. The description of construction existing on the site has been given by the petitioner, which does not show that it is at all intended for providing residence to the ascetics or imparts education of the tenets of Nimbark Sampraday, nor is there anything to show, that any other activity constituting Math are at all undertaken by the petitioner, or in the property; rather admittedly, it is a temple, and in view of the averments made in para 10 and 18 of the writ, so also averments appearing at various other places, it is clear that admittedly the temple was constructed by ancestors of Jeewan Mal, wherein the deities of various Gods are installed, and obviously therefore it cannot be concluded to be anything else then a temple, of which the petitioner's ancestors were Pujari. May be that at some place the petitioner and his ancestors have been addressed as Mahant, but then that may be either a loose expression, or a expression in reverence, but in absence of there being any Math, it cannot be said, that there was any office of Mathship, in sense of the term, sought to be invoked by the petitioner. A look at Annexure R 4/1, which is nothing less than a suit filed by petitioner's ancestor, way back in the

year 1967 i.e. much before the alleged ailment of Pokar Das does show, that therein Pokar Das has clearly described himself to be Pujari, and in the pleading of the plaint he had clearly averred himself to be Pujari of Mandir Ganga Mai, this document Annexure R 4/1 is a suit filed by Pokar Das for recovery of possession of certain properties of temple which were encroached by the defendant therein. Then, Annexure R 4/3 and R 4/4 are the documents of April, 1978, which also clearly constitute admission of Pokar Das demolishing the petitioner's case about the petitioner being owner of the property. Even in rejoinder nothing has been said about Annexure R 4/1, R/4/3 and R 4/4.

Thus, in my view, from the concession of the learned counsel for the petitioner, read with the above documents, it is more than clear that it is a temple constructed by ancestors of Jeewan Mal, wherein the petitioner is a Pujari, this is a public trust, and does require registration under the Public Trust Act.

Then, the question is as to who should be held to be the trustees of the trust? When admittedly, as admitted in para-10 and 18 of the writ, and as appears from the recitals of even the Patta Annexure-4, that the temple was constructed by Jeevan Mal, and petitioner also claims the temple to have been given to his ancestors, who have been found to be only Pujaris, the descendants of Jeewan Mal do

stand in the character of the founders of the trustees. That being the position, it cannot be said that the learned Commissioner was at all in error in passing the order.

An argument was also raised by the learned counsel for the petitioner that the order of the learned Commissioner Devasthan Annexure-25 is not a speaking order. True it is that it does not give much detailed reasons for reversing the order of learned Assistant Commissioner, but then since I have heard learned counsel for the parties thread bare, and have gone on the question of merits, the mere fact that the Commissioner did not give elaborate reasons does not adversely affect the petitioner.

In this background it is also required to be noticed, that pursuant to the remand order, the final order has also been passed by the Assistant Commissioner which has not been challenged by the petitioner at all.

Thus, taken from any stand point I do not find any force in the writ petition. The same is, therefore, dismissed. The parties shall bear their own costs.

(N P GUPTA),J.

/Sushil/